



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

INTEL CORPORATION,

Plaintiff,

v.

NVIDIA CORPORATION,

Defendant.

C.A. No. 4373-VCS

**REDACTED PUBLIC VERSION
FILED MARCH 26, 2009**

ANSWER TO COMPLAINT AND COUNTERCLAIMS

Defendant NVIDIA Corporation ("NVIDIA"), by and through its undersigned counsel, hereby responds to Plaintiff Intel Corporation's ("Intel") Complaint as follows:

Nature of the Case

1. In response to paragraph 1, NVIDIA admits that this action purports to be an action for injunctive and declaratory relief relating to a disagreement between Intel and NVIDIA regarding NVIDIA's licensing rights and that Intel is requesting a declaration to resolve this disagreement. NVIDIA further admits that it believes its disputed MCP chipsets are licensed. Otherwise, NVIDIA denies the allegations in this paragraph.

2. In response to paragraph 2, NVIDIA admits that it believes – and has stated its belief – that it is licensed to market its MCP chipsets for use with Intel processors. Otherwise, NVIDIA denies the allegations in this paragraph.

3. In response to paragraph 3, NVIDIA admits that Intel sent a letter requesting NVIDIA to issue a joint press release to the effect that Intel does not believe that NVIDIA is

licensed to market MCP chipsets and that NVIDIA declined to do so. Otherwise, NVIDIA denies the allegations in this paragraph.

4. In response to paragraph 4, NVIDIA admits that it believes that Intel has violated its contractual obligations and has improperly made statements to the effect that Intel does not believe, or “disputes,” that NVIDIA is licensed to market MCP chipsets. NVIDIA further admits that Intel is seeking a declaration from the Court that Intel has complied with its obligations. Otherwise, NVIDIA denies the allegations in this paragraph.

5. In response to paragraph 5, NVIDIA admits that the parties have met and attempted to resolve this dispute and have participated in a private mediation process. NVIDIA further states that it is without knowledge sufficient to admit or deny the remaining allegations in this paragraph, and these allegations are therefore denied.

6. In response to paragraph 6, NVIDIA admits the allegations in the first and third sentences. NVIDIA further states that the second sentence is a legal conclusion to which no responsive pleading is required.

Parties

7. In response to paragraph 7, NVIDIA, on information and belief, admits the allegations in the first and third sentences. Regarding the second sentence, NVIDIA admits that Intel develops products for the computing industry. Otherwise, NVIDIA denies the allegations in the second sentence of this paragraph.

8. In response to paragraph 8, NVIDIA admits the allegations.

Background

The Technology

9. In response to paragraph 9, NVIDIA admits the allegations in the first sentence. NVIDIA further responds that, although it admits that the second, third and fourth sentences of this paragraph provide some information about computing technology, without further context for what Intel means by terms such as, for example, “typically,” “brains,” “normally,” and “essential logic functions,” “extend,” “system performance,” and “other capabilities,” NVIDIA is without knowledge sufficient to admit or deny the remaining allegations, and these allegations are therefore denied. In response to the fifth sentence, NVIDIA admits that some chipsets are comprised of two chips, which may be named “Northbridge” and “Southbridge,” and further admits that computer system buses can be used to connect the processor to various components. Otherwise, NVIDIA denies the allegations in the fifth sentence of this paragraph. Assuming that the sixth sentence incorporates all the characterizations in Figure 1, NVIDIA denies the allegations in the sixth sentence of this paragraph.

10. In response to paragraph 10, NVIDIA admits that Intel owns patents and intellectual property pertaining to computing technology. NVIDIA is without knowledge sufficient to admit or deny the remaining allegations, and therefore denies them.

The License Agreements

11. In response to paragraph 11, NVIDIA admits the allegations in this paragraph.

12. In response to paragraph 12, NVIDIA admits the allegations in the first sentence. With respect to the second sentence, NVIDIA states that the CLA is the best evidence of its contents and denies all allegations inconsistent with the contents of the CLA.

13.

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Otherwise NVIDIA denies the allegations in this paragraph.

NVIDIA further states that the CLA is the best evidence of its contents and denies all allegations inconsistent with the contents of the CLA.

14. In response to paragraph 14, NVIDIA admits that certain portions of § 1.9 of the Cross License and § 2.8 of the CLA are quoted correctly, but otherwise denies the allegations in this paragraph.

15. In response to paragraph 15, NVIDIA admits that, with respect to the first sentence,

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Otherwise, NVIDIA denies the allegations in the first sentence of this paragraph. NVIDIA denies the allegations in the second and third sentences of this paragraph. NVIDIA admits, with respect to the fourth sentence, that § 2.8 of the CLA describes the elements of a licensed chipset. Otherwise, the term “all chipsets” is, without further context, too vague and ambiguous to understand fully and thus NVIDIA lacks knowledge sufficient to admit or deny the allegations this sentence and therefore denies them. Assuming that the fifth sentence incorporates all the characterizations in Figure 2, NVIDIA denies the allegations in the fifth sentence of this paragraph.

Intel's Nehalem Architecture

16. In response to paragraph 16, NVIDIA, on information and belief, admits the allegations in the first sentence. NVIDIA lacks knowledge sufficient to admit or deny the allegations in the second sentence, and therefore denies them. Assuming that the third sentence incorporates all the characterizations in Figure 3, NVIDIA denies the allegations in the third sentence of this paragraph. With respect to the fourth sentence, NVIDIA admits that a Nehalem-compatible MCP chipset architecture satisfies (i) and (iii) of § 2.8 or the CLA, but otherwise denies the allegations in the fourth sentence of this paragraph. NVIDIA denies the allegations in the fifth and sixth sentences of this paragraph.

17. In response to paragraph 17, NVIDIA denies the allegations in this paragraph.

Intel's Dispute with NVIDIA

Intel Informs NVIDIA that It Is Not Licensed

18. In response to paragraph 18, NVIDIA admits that Intel informed NVIDIA about its plans to introduce Nehalem, but otherwise denies the allegations in this paragraph.

19. In response to paragraph 19, NVIDIA admits that, with respect to the first sentence, Intel and NVIDIA have had discussions regarding whether MCP chipsets were licensed for the Nehalem architecture. Otherwise, NVIDIA denies the allegations of the first sentence. With respect to the second sentence, NVIDIA admits that, at some point, Intel took the position that NVIDIA's MCP chipsets are not licensed for use with the Nehalem architecture. Otherwise NVIDIA denies the allegations of the second sentence of this paragraph. With respect to the third sentence, NVIDIA admits that it has informed Intel that it disagrees with Intel's view of the CLA. Otherwise NVIDIA denies the allegations of the third sentence of this paragraph.

20. In response to paragraph 20, with respect to the first and second sentences, NVIDIA admits that it informed Intel of its belief that it is licensed to design, market and sell MCP chipsets compatible with the Nehalem architecture. Otherwise, NVIDIA denies the allegations in the first and second sentences of this paragraph. With respect to the third sentence, NVIDIA admits that it worked diligently during 2008 to try to resolve its differences with Intel. Otherwise NVIDIA lacks knowledge sufficient to admit or deny the allegations in the third sentence and therefore denies them. NVIDIA admits the allegations in the fourth sentence of this paragraph.

21. In response to paragraph 21, NVIDIA admits that there is a controversy between the parties relating to the CLA and that resolution of this controversy may facilitate business planning. Otherwise, NVIDIA lacks knowledge sufficient to admit or deny the allegations in this paragraph, and therefore denies them.

NVIDIA's [Alleged] Breaches of the Agreements¹

22. In response to paragraph 22, NVIDIA admits the allegations in the first and second sentence of this paragraph. With respect to the third sentence, NVIDIA states that the *Maximum PC* article is the best evidence of its contents and denies all allegations inconsistent with its contents.

23. In response to paragraph 23, NVIDIA denies the allegations in this paragraph.

24. In response to paragraph 24, NVIDIA admits that Intel sent a letter dated July 1, 2008, in which Intel accused NVIDIA of making false and misleading statements and proposed a joint press release stating that Intel "believes NVIDIA is not licensed," that NVIDIA believes it

¹ NVIDIA has incorporated the headings of the Complaint for the Court's convenience. To the extent that this heading is deemed an allegation of the Complaint, NVIDIA denies this allegation.

is licensed, and that the parties were engaged in "dispute resolution procedures." Otherwise, NVIDIA denies the allegations in paragraph 24.

25. In response to paragraph 25, NVIDIA denies the allegations in the first sentence of this paragraph. With respect to the second and third sentences, NVIDIA states that the *bit-tech* and *CustomPC* articles are the best evidence of their contents and denies all allegations inconsistent with their contents.

26. In response to paragraph 26, NVIDIA admits, with respect to the first sentence, that it believes -- and has stated its belief -- that it is licensed to market its MCP chipsets for use with Intel processors and is engaging in development activity consistent with its beliefs and expectations. Otherwise NVIDIA denies the allegations in this sentence. With respect to the second sentences, NVIDIA states that the *bit-tech* article is the best evidence of its contents and denies all allegations inconsistent with its contents.

27. In response to paragraph 27, NVIDIA denies the allegations in this paragraph.

28. In response to paragraph 28, NVIDIA admits that Intel has accused NVIDIA of making misstatements, but otherwise denies the allegations in this paragraph.

29. In response to paragraph 29, NVIDIA admits the allegations in the second sentence of this paragraph, but otherwise denies the allegations in this paragraph.

30. In response to paragraph 30, NVIDIA admits the allegations in the first sentence of this paragraph. NVIDIA denies the allegations in the second sentence of this paragraph. With respect to the third sentence, NVIDIA admits that Intel agreed to be bound by the terms of the CLA, but otherwise denies the allegations in the third sentence of this paragraph.

31. In response to paragraph 31, NVIDIA admits that there is a controversy between the parties over the CLA, but otherwise denies the allegations of this paragraph.

Count I

(Declaratory Judgment)

32. In response to paragraph 32, NVIDIA incorporates by reference paragraphs 1-31 of this Answer as if fully set forth herein.

33. In response to paragraph 33, NVIDIA states that the allegations set forth in the first sentence are legal conclusions to which no responsive pleading is required. Otherwise, NVIDIA denies the allegations in this paragraph.

34. In response to paragraph 34, NVIDIA admits that there is a controversy between the parties that presents real and immediate issues for NVIDIA. NVIDIA further admits that expeditious resolution of this lawsuit is necessary and appropriate. Otherwise NVIDIA denies the allegations of this paragraph.

35. In response to paragraph 35, NVIDIA admits that it believes -- and has informed Intel of its belief -- that it is licensed under the CLA to make, market and sell its MCP chipsets for use with Intel processors. Otherwise NVIDIA denies the allegations of this paragraph.

36. In response to paragraph 36, NVIDIA denies the allegations in this paragraph.

Count II

(Breach of Contract)

37. In response to paragraph 37, NVIDIA incorporates by reference paragraphs 1-36 of this Answer as if fully set forth herein.

38. In response to paragraph 38, NVIDIA states that the allegations set forth in the first sentence are legal conclusions to which no responsive pleading is required. Otherwise, NVIDIA denies the allegations in this paragraph.

39. In response to paragraph 39, NVIDIA admits the allegations in the first sentence of this paragraph. NVIDIA denies the allegations in the second sentence of this paragraph.

40. In response to paragraph 40, NVIDIA denies the allegations in this paragraph.

41. In response to paragraph 41, NVIDIA denies the allegations in this paragraph.

42. In response to paragraph 42, NVIDIA denies the allegations in this paragraph.

Count III

(Declaratory Judgment)

43. In response to paragraph 43, NVIDIA incorporates by reference paragraphs 1-42 of this Answer as if fully set forth herein.

44. In response to paragraph 44, NVIDIA states that the allegations set forth in the first sentence are legal conclusions to which no responsive pleading is required. Otherwise, NVIDIA denies the allegations in this paragraph.

45. In response to paragraph 45, NVIDIA admits the allegations in this paragraph.

46. In response to paragraph 46, NVIDIA denies the allegations in this paragraph.

Affirmative Defenses

For its affirmative defenses to the Complaint, NVIDIA hereby incorporates paragraphs 1 to 69 of its counterclaims herein and states:

First Affirmative Defense

(Failure to State a Cause of Action)

The complaint fails to state a claim, in whole or in part, upon which relief may be granted.

Second Affirmative Defense

(Equitable Estoppel)

Intel's claims are barred in whole or in part by the doctrine of equitable estoppel.

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NVIDIA reasonably relied on Intel's actions and

spent significant time and effort on its design, and Intel benefited from NVIDIA's actions. NVIDIA lacked the ability to know that Intel would change its position and would be harmed if Intel's claims are allowed to stand.

Third Affirmative Defense

(Waiver)

Intel's claims are barred in whole or in part by the doctrine of waiver.

Fourth Affirmative Defense

(Laches)

Intel's claims are barred in whole or in part by the doctrine of laches.

Fifth Affirmative Defense

(Unconscionability)

Intel's claims are barred in whole or in part because, to the extent that the Court finds that NVIDIA chipsets are not licensed, the terms of the Chipset License Agreement and the Cross License are unconscionable.

Sixth Affirmative Defense

(Breach of the Implied Covenant of Good Faith and Fair Dealing)

Intel's claims are barred in whole or in part by Intel's breach of the implied covenant of good faith and fair dealing.

Seventh Affirmative Defense

(*In Pari Delicto*)

Intel's claims are barred in whole or in part because Intel has engaged in conduct that renders it *in pari delicto*.

Eighth Affirmative Defense

(Unclean Hands)

Intel's claims are barred in whole or in part by reason of Intel's unclean hands.

Ninth Affirmative Defense

(Equitable Rescission)

Intel's claims are barred in whole or in part because NVIDIA is entitled to equitable rescission of the CLA and Cross License.

Tenth Affirmative Defense

(Acquiescence)

Intel's claims are barred in whole or in part by the doctrine of acquiescence.

Eleventh Affirmative Defense

(Additional Defenses)

NVIDIA presently has insufficient knowledge or information upon which to form a belief as to whether it has additional, as yet unstated, separate defenses available. NVIDIA reserves the right to assert further separate and additional defenses in the event it determines that such defenses are appropriate.

NVIDIA'S COUNTERCLAIMS

Introduction

1. Intel has manufactured this licensing dispute as part of a calculated strategy to eliminate NVIDIA as a competitive threat. For years, Intel has dominated the lucrative field of central processing units ("CPUs"), with Intel's graphics offerings being an afterthought. NVIDIA, in contrast, correctly predicted that graphics processing would become increasingly important to computer technology and pioneered sophisticated graphics products, including innovative new graphics processing units ("GPUs"). In fact, in recent years, a growing, multi-

billion dollar marketplace for computer graphics technology processing has emerged with NVIDIA at its center. Thus, after years of dominating the computer processing space, Intel found itself needing to play catch-up to NVIDIA's pioneering graphics processing technology.

2. Consequently, in 2004, Intel entered into the agreements with NVIDIA that are at the center of this dispute. In exchange for getting a license to NVIDIA's entire patent portfolio, including NVIDIA's extensive graphics patents, Intel agreed to give NVIDIA a broad, long-term license to make chipsets for Intel's CPUs. Put simply, NVIDIA was willing to give Intel access to its patents and go head-to-head competing against Intel's graphics processing in exchange for open access to make chipsets that worked with Intel's CPUs. And, once again, it looked as though NVIDIA had made the right decision. Over the course of the license, NVIDIA's graphics products routinely beat out Intel's best graphics offerings in the marketplace. All the while, NVIDIA has fully lived up to its end of the deal, sharing its state-of-the-art intellectual property with Intel.

3. Unable to compete on the merits, Intel is now using this lawsuit to tilt the playing field decidedly in its favor. After months of attempting to steer customers away from NVIDIA by claiming there was a licensing "dispute," Intel has now publicly and unequivocally asserted that NVIDIA is not licensed to sell any chipset—no matter how designed—for its next generation of "Nehalem" CPUs. Intel's disavowal of its license and preemptive filing of this lawsuit will, by design, serve to alarm customers and immediately and negatively impact NVIDIA's sales, even as to chipsets sold for architectures other than "Nehalem." At the same time that Intel disavows its license to NVIDIA, Intel also apparently believes it is entitled to continue to reap the enormous benefits of its license to NVIDIA's state-of-the-art patent

portfolio, for the full life of the license, and without NVIDIA receiving the benefit of the chipset license it bargained for in exchange.

4. Intel's sought-after windfall rests upon the improper notion that the Court should replace the broad, plain words of the Chipset Licensing Agreement with overly narrow and self-serving technical definitions that appear nowhere in the agreements and are wholly inconsistent with Intel's prior conduct and statements. Intel then applies its new "definitions" to simplistic and inaccurate descriptions of how the chipset technology functions. From there, Intel seeks to disavow all of NVIDIA's licensing rights, while at the same time, keeping all of its rights to NVIDIA's patent portfolio. Intel positions are neither correct, nor are they taken in good faith. NVIDIA files these counterclaims to end Intel's gamesmanship, ensure that Intel honors its obligations to NVIDIA, and prevent Intel from benefiting from its tactical decision to publicly disavow its license obligations.

5. NVIDIA first counterclaims for a declaration that it is fully licensed under the CLA to make the so-called "Disputed NVIDIA MCPs." The CLA neither limits NVIDIA's license to "traditional" Intel processors nor "carves out" some right for Intel to unilaterally end the license by tinkering with its architecture. Had the parties intended—as Intel now insists—for NVIDIA's license to terminate if Intel decided to "integrate" the "Memory Controller," the CLA would have said so. It does not. Instead, the CLA requires only that

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something that

NVIDIA's chipsets do and will continue to do. In fact, prior to Intel's new-found reinterpretation of the CLA,

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6. In making its opportunistic bid to cut short the CLA and lock NVIDIA out of the chipset business, Intel now pretends that **REDACTED** —a broad, *lower case* term—is actually a capitalized,

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it becomes literally impossible for NVIDIA to make any kind of chipset that is covered by the license. This, of course, has the convenient effect (from Intel’s perspective) of depriving NVIDIA of the benefit of its bargain, while, at the same time, preserving Intel’s license to continue to practice all of NVIDIA’s extensive patents.

7. Intel’s convoluted and self-serving view of the CLA is at odds with both Intel’s past conduct as well the plain words and spirit of the agreements. It also ignores the actual operation of NVIDIA MCP chipsets. Chipsets, processors and the “DRAM” do not function as isolated boxes as shown in the “Figures” of Intel’s complaint. Instead, and as NVIDIA previously demonstrated to Intel, even under Intel’s improperly narrow definitions, NVIDIA MCPs will continue to

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Accordingly, NVIDIA seeks a declaration affirming NVIDIA’s licensing rights and enjoining Intel from taking any further action that is inconsistent with Intel’s licensing obligations.

8. NVIDIA also counterclaims for breach of contract and breach of the implied covenant of good faith and fair dealing. Quite simply, this is not a good faith dispute over a minor contract interpretation issue. Intel has wrongly and publicly stated that NVIDIA is not licensed to its “Nehalem” architectures for the strategic purpose of eliminating a competitive threat to its business. Intel’s actions not only constitute a breach of § 7.2 of the CLA insofar as

Intel's statements have been false and misleading, they represent an unequivocal and unilateral repudiation of the very license it agreed to provide. Intel's decision to preemptively – and publicly – repudiate NVIDIA's license is directly and immediately injuring NVIDIA. Intel's actions will instill fear among customers that NVIDIA's chipset products will soon be unavailable. Consequently, not only is Intel harming NVIDIA's MCP sales regarding future Nehalem products, but NVIDIA's sales of undisputedly licensed MCPs to current Intel architectures are also being affected as Intel uses its public disavowal of the license to alarm customers into believing that NVIDIA's chipsets will soon be unusable with Intel platforms.

9. Accordingly, NVIDIA seeks a finding that Intel has breached and anticipatorily breached the CLA. NVIDIA requests that, **REDACTED** Intel's rights under the Cross License be terminated in their entirety. Having breached the contract and irreparably injured NVIDIA, Intel has lost the right to continue to enjoy the considerable benefit of its license to NVIDIA's patent portfolio.

10. Alternatively, NVIDIA seeks a judgment that Intel's calculated actions have breached the implied covenant of good faith and fair dealing underlying both the CLA and the Cross License and requests an order rescinding those contracts. Not only has Intel's strategic disavowal of its license unreasonably interfered with NVIDIA's bargained for rights, this lawsuit is part of larger set of misconduct by Intel designed to deprive NVIDIA of access to Intel's CPUs and frustrate NVIDIA's bargained-for right to make Intel-compatible chipsets. In doing so, Intel is preventing NVIDIA from receiving the value that it bargained for in exchange for giving Intel the enormous benefit of a cross license to its entire patent portfolio.

Jurisdiction and Parties

11. Upon information and belief, Intel Corporation is a corporation organized under the laws of Delaware.

12. NVIDIA Corporation is a corporation organized under the laws of Delaware.

13. The agreement in dispute, the CLA, provides in §§ 8.8 and 8.9 that any litigation shall be governed by the laws of the State of Delaware, and that such litigation shall be subject to the exclusive jurisdiction of the courts of the State of Delaware or the Federal courts sitting therein.

14. NVIDIA seeks equitable relief, including declaratory and injunctive relief regarding certain provisions in the CLA. NVIDIA further requests a finding that Intel has breached its obligations under the CLA and seeks, as a remedy, that the Court specifically enforce the provisions of the contract,

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Alternatively, NVIDIA seeks a finding that Intel has breached the implied covenant of good faith and fair dealing surrounding the CLA and Cross License and requests rescission of the agreements.

15. Because Intel's breaches are significantly interfering with both current and future sales opportunities, Intel's actions are causing NVIDIA irreparable injury.

Factual Background

A. NVIDIA

16. NVIDIA is a market leader and pioneer in innovative graphics technology, including GPUs. GPUs provide robust, interactive graphics for workstations, personal computers, game consoles, and mobile devices. They are must-have technology for video-game enthusiasts as well as others who have need for fast, sophisticated graphics and video

technology, such as movie animators and car designers. NVIDIA's GPUs have also become increasingly popular among consumers as modern applications (such as Google Earth, Bluray movies, photo and movie makers) are graphics intensive and significantly benefit from NVIDIA's GPUs. NVIDIA's GPUs are viewed in the market as cutting-edge and contain built-in features and capabilities that enable the computer system to deliver superior performance in rendering and displaying graphics. Typically GPUs are sold as discrete chips that operate in conjunction with the computer's CPU. The GPU marketplace has been characterized by rapid and growing demand as more and more consumers view superior graphics capabilities as a key part of their purchasing decisions.

17. In addition to GPUs, NVIDIA also sells Media and Communications Processors ("MCPs"), which are chipsets located on the computer's "motherboard" that operate with the GPU, the CPU, and other system devices and peripherals to enhance and improve system performance. NVIDIA's licensed MCP chipsets are designed to enable NVIDIA's GPU technology to work more effectively on computer systems that have Intel CPUs. NVIDIA makes licensed MCP chipsets for use with a variety of current Intel CPU designs. In addition, NVIDIA is designing chipsets for use with various Intel architectures, including architectures that Intel purports to call "Nehalem," that have not yet been released in the market. One of NVIDIA's most popular products combines a powerful GPU with a MCP on a single chip.

B. Intel

18. Intel is the world's largest semiconductor chip maker, selling CPUs for use in a variety of computer systems, including desktops, workstations, laptops, servers, notebooks and netbooks. Intel also sells chipsets, motherboard products, flash memory products, Internet connectivity products, and other communications infrastructure. In particular, Intel dominates the world-wide sales for both CPUs and chipsets, and is the dominant seller of both x86 CPUs

and chipsets sold for the Intel platform. Intel's commercial conduct is the subject of numerous pending trade regulation investigations throughout the world, including those by regulators in Japan, Korea, Germany, the EU, the state of New York and the United States Federal Trade Commission.

19. Intel is also attempting to expand its position in the fast-growing graphics processing field. Among Intel's current product offerings is technology that competes with NVIDIA's MCPs and which purports to allow NVIDIA's GPU technology to operate with Intel's CPUs. However, NVIDIA's MCPs are widely perceived as superior to Intel's competing solution.

C. The CLA and Cross License

20. In 2004, Intel and NVIDIA saw an opportunity for a mutually beneficial business relationship. Intel saw the growing market demand for graphics processing, GPUs, and NVIDIA's success in that area. Intel wanted to develop enhanced graphics capabilities and improve its position in the multi-billion dollar graphics field. However, in order for Intel to both develop more robust graphics technology and sell that technology free from patent concerns, Intel needed access to NVIDIA's extensive patent portfolio.

21. Conversely, in light of Intel's dominant position in CPU sales, in order for NVIDIA to commercialize its GPU and MCP technologies effectively, NVIDIA needed the right to design and sell chipsets that are compatible with Intel's proprietary CPUs and "buses" (communication pathways) that enable data processing communications with its CPUs. Further, Intel made clear that it would not give NVIDIA such a license without obtaining a cross license to all of NVIDIA's patents.

22. As a result, NVIDIA and Intel entered into two interrelated, written contracts with effective dates of November 18, 2004; the CLA and the Cross License. Together, these

agreements represent the bargain between the parties. Under the CLA, NVIDIA was given a multi-year right to design chipsets that are compatible with Intel's CPUs. In turn, under the Cross License, NVIDIA granted Intel, for the same period of time, the right to practice NVIDIA's patent portfolio, which included extensive graphics technology. The term of both the Cross License and CLA runs until the expiration of the last applicable patent.

23. The Cross License and CLA together were intended to create simultaneous, long-term rights in each side's intellectual property and thus ensure that each side could continue to make and sell their products in the marketplace free of patent concerns from the other and exploit fully the value each conferred on the other. The two agreements were intended to work in conjunction with one another. For example,

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24. Intel has enjoyed substantial benefits from this contractual arrangement. Obtaining rights to NVIDIA's patent portfolio gave Intel the opportunity to develop competing graphics technology, which it is aggressively attempting to do. Not only is Intel integrating expanded graphics processing into its CPUs, it is being publicly reported that Intel is now nearing the completion of its own, competing GPU, code-named "Larrabee." The Cross License thus was a necessary first step for Intel's further expansion of its competing graphics and upgrading the capabilities of its CPUs.

25. In turn, by the CLA, Intel granted NVIDIA, *inter alia*, a royalty-bearing license to design, build and sell chipsets that could connect to, and be compatible with, Intel's market-

dominant CPUs. This provided NVIDIA long-term certainty so that NVIDIA would and could invest in and grow its MCP chipset business and, by extension, its GPU business and extract the significant value it had given to Intel by granting it a full patent license to NVIDIA's technology.

26. Consistent with the value it had given to Intel, NVIDIA's right to make chipsets for Intel processors was, by intention, very broad. The CLA does not limit NVIDIA's rights to Intel's current CPU architecture, or indeed, any particular Intel CPU architecture. Instead, consistent with the parties' intention of creating a long-term business partnership, the CLA defined NVIDIA's rights in broad, functional language

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Nothing in the CLA limits the license to existing or "traditional" CPU models or otherwise limits the license to the unduly narrow scope that Intel now asserts. Nor does the CLA contain any language suggesting the Intel could end the license by purporting to relocate either the "memory controller," or certain aspects of the "DRAM."

D. Intel's Pre-lawsuit Interpretation of the CLA

27. From 2004 through late 2007, Intel appeared to recognize its license with NVIDIA. It accepted NVIDIA's royalty checks and actively shared on-going CPU design changes with NVIDIA.

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In fact,

in his Fall 2007 Keynote speech, Pat Gelsinger, a senior vice president for Intel, publicly highlighted NVIDIA as one of its “partners” on its new Nehalem platform. As its conduct made clear, Intel both believed that NVIDIA was licensed to this design and, at that time, wanted to market its new CPU as compatible with NVIDIA’s state-of-the-art graphics.

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29. Intel’s initial recognition that NVIDIA was licensed to its new Nehalem architecture is not surprising. Even with the new architecture, it was clear that NVIDIA chipsets would fall squarely within the definition of § 2.8 of the CLA. NVIDIA’s MCPs undisputedly constitute

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E. The Changing Computer Market

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For years, the traditional computer system included an expensive CPU with extensive, general-purpose processing capabilities. Intel dominated the market for such high-end CPUs. Graphics were seen as a secondary, less important feature. However, with the market demanding more and more graphics capabilities, a significant and growing market was emerging for computers with expanded graphics processing. Conversely, the graphics-oriented consumer did not value many of the features and capabilities offered with the traditional, high-end CPU models.

33. In as much as this market presented NVIDIA with a clear opportunity, this changing market presented a direct threat to Intel. For years, Intel had built its business on offering premium CPUs at premium prices, with resulting high profit margins. With NVIDIA's new graphics technology, customers began to realize that if they purchased an NVIDIA graphics solution, they no longer needed to purchase a premium, high-margin Intel CPU. Instead, NVIDIA's GPU and MCP technology could be combined with a lower-end, less expensive Intel CPU to deliver the features that those graphics users wanted at a much lower cost. Put another way, NVIDIA's GPU and MCP solutions allow customers to spend their dollars on critical graphics processing technology without paying a premium for central processing functions.

Further, even with its new access to NVIDIA's patent portfolio, Intel did not yet have graphics processing ready to market that matched the quality of NVIDIA's GPUs. Intel's competing "Larrabee" GPU was still in development and was at least two or three years away from market. Thus, by the end of 2007, it became clear that Intel was at risk of losing profits on its core CPU and chipset businesses while not yet being in a position to effectively challenge NVIDIA in the multi-billion dollar graphics field. Put simply, Intel needed to buy some time.

F. Intel Breaches the CLA

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Finally, after repeatedly rebuffing NVIDIA's efforts to begin designs for MCP chipsets to fit the next so-called "Nehalem" iteration, Intel for the first time informed NVIDIA that it believed NVIDIA did not have a license under the CLA to sell chipsets for "Nehalem" at all. Intel asserted that its Nehalem architecture precluded NVIDIA from designing any type of chipset that could meet the requirements of § 2.8 of the CLA.

35. In attempting to resolve the dispute with Intel in good faith, NVIDIA provided a detailed technical explanation as to why NVIDIA's Nehalem-compatible chipsets would continue to be licensed. NVIDIA explained and illustrated how its chipsets would continue to

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even using Intel's unduly

narrow definitions. After initially admitting during an in-person meeting that it "had not

considered” NVIDIA’s detailed, technical explanation, Intel sent NVIDIA a letter summarily dismissing NVIDIA’s position.

36. Instead, Intel decided to unequivocally repudiate NVIDIA’s license. In an April 30, 2008 letter, Intel stated that it had the unilateral right to end NVIDIA’s license by reconfiguring its CPU. Intel took the position that once it “integrated” its “memory controller” with the CPU, it was literally impossible for NVIDIA to design any chipset that would satisfy the license.

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37. Not only did the April 2008 letter make clear that Intel intended to take away NVIDIA’s license, it demanded that NVIDIA tell the market that NVIDIA was not licensed to its “Nehalem” architecture. In short, Intel not only disregarded both its prior course of conduct and NVIDIA’s well-founded explanation as to why Intel should honor NVIDIA’s bargained for licensing rights, it essentially instructed NVIDIA to cease attempting to sell its chipsets. Intel then requested mediation as required by the CLA, to which NVIDIA agreed. Shortly in advance of the mediation, Intel sent a second letter accusing NVIDIA of being in “breach” of the CLA for voicing any belief that NVIDIA was licensed to “Nehalem,” and demanding that NVIDIA issue a joint press release purportedly clarifying that Intel did not believe NVIDIA was licensed. NVIDIA promptly responded that it disagreed with Intel’s position and rejected Intel’s demand to issue a joint press release.

38. Intel’s filing of the Complaint initiating this lawsuit is the latest step in its overall strategy, and constitutes further breaches by Intel. The Complaint includes numerous false and/or misleading statements by Intel regarding the terms of the CLA. For example, Intel

suggests that

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Taken with the

remainder of Intel's complaint, these assertions are at best misleading because

REDACTED is not specially defined to include only the certain "DRAM" to which Intel refers. Similarly, Intel states:

Because the Nehalem processors have an integrated memory controller as depicted in Figure 3, any chipset compatible with the Nehalem architecture

REDACTED Accordingly, the Disputed NVIDIA MCPs are not licensed under the CLA.

Complaint, ¶ 17. These statements are false and misleading because chipsets compatible with the Nehalem architecture, including the so-called "Disputed NVIDIA MCPs," can indeed

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Elsewhere throughout its Complaint, both in its express and implicit characterizations of the scope of § 2.8(ii) of the CLA and in its allegations that NVIDIA's chipsets would not fall within this scope, Intel makes further false and/or misleading statements about the CLA and/or its terms. Indeed, the core premise of Intel's Complaint -- namely, that NVIDIA's chipsets are not licensed to "Nehalem" under the CLA -- constitutes a false and misleading assertion by Intel regarding the CLA.

39. Intel's motivations are clear -- by denying NVIDIA the ability to interface with Intel's Nehalem architecture, Intel would, in the long-term, lock NVIDIA out of a large portion of the chipset space and disable a potentially powerful competitor. Customers who want an Intel CPU would have no choice but to buy Intel's competing, inferior graphics chipsets. Further, by publicly announcing in this lawsuit that NVIDIA is "not licensed" to Intel's next-generation "Nehalem" architecture, and making misleading statements in this complaint about the scope of the license, Intel can immediately scare customers away from NVIDIA current graphics

offerings by insinuating that these products will soon be unavailable for use on Intel's dominant platform. In short, Intel's very public and improper disavowal of NVIDIA's license serves to both protect Intel sales of premium CPUs while, at the same time, giving Intel time to finalize its development of its competing graphics.

G. Intel's Actions Are Immediately Injuring NVIDIA

40. Intel's refusal to acknowledge that NVIDIA is licensed to connect to its Nehalem architecture, and its public lawsuit on this issue, is resulting in immediate and irreparable injury to NVIDIA. Regardless of whether Intel can ultimately prevail in this lawsuit, the mere fact that Intel has publicly declared that NVIDIA does not have a license and has filed this lawsuit has created a cloud over NVIDIA's rights that is depriving NVIDIA of the full benefit of its bargain.

41. Product design, development, fabrication, production and manufacturing cycles in the microprocessor, graphics and chipset industry are lengthy. Thus, NVIDIA's customers, including PC makers, motherboard manufacturers and OEMs, make design decisions on products that will be launched months or even years in the future. Without assurances that a chipset is licensed to operate with Intel's latest CPU technology, third-party customers are typically unwilling to agree to design and/or make motherboards and other computer products that include such chipsets.

42. Further, because product continuity is important in the computer industry, Intel's preemptive lawsuit – in which it unilaterally seeks to declare that NVIDIA is not licensed to make products that have yet to even appear in the market – is immediately harming NVIDIA and depriving NVIDIA of its bargained for rights under the CLA. NVIDIA is informed and believes that Intel is using this lawsuit as a sales tool to discourage customers from continuing to invest in NVIDIA technology. Thus, this lawsuit is negatively impacting sales of NVIDIA chipsets for Intel's traditional CPU architectures, chipsets which all parties agree fall within the license.

II. Intel's Lawsuit is Part of a Larger Strategy to Defeat NVIDIA's License

43. This lawsuit is more than a narrow dispute about the language in a license. It is part of a larger plan by Intel to undermine NVIDIA's licensing rights so that it can lock NVIDIA out of the chipset business and, by extension the larger graphics marketplace.

44. In particular, NVIDIA has become informed and believes that Intel is intending to frustrate NVIDIA's license right to soon-to-be-released "Nehalem" CPUs in which the memory controller has not been integrated with the CPU. In 2008, NVIDIA learned that, for certain of Intel's next iterations of "Nehalem," Intel was returning to an architecture in which the "memory controller" remains on the "Northbridge" chip and is not integrated with the CPU. On information and belief, these new iterations of "Nehalem" have been code named, among other things, "Arrandale" (for notebooks) and "Clarkdale" (for desktops). Notwithstanding its new Nehalem designs, Intel has persisted in broadly insisting that NVIDIA was not licensed to "Nehalem."

45. NVIDIA is also informed and believes that, in addition to misleadingly characterizing Arrandale and Clarkdale as "Nehalem" architectures (and thus part of Intel's purported "licensing dispute"), Intel is planning other means to prevent NVIDIA from enjoying its license to make chipsets for these CPU products. For example, on information and belief, Intel is planning on packaging its new designs such that the CPU chip and the Northbridge chip are physically bonded to a single silicon substrate in a manner that, although yielding no material technical benefits, will function to make it difficult, if not impossible, for NVIDIA to connect its MCP chipset to the CPU. Indeed, every effort by NVIDIA to discuss an MCP design for connecting to the Intel Bus for Arrandale or Clarkdale has been met with active resistance by Intel.

46. NVIDIA is also informed and believes that Intel has other plans, both technical and strategic, that are designed to interfere with NVIDIA's license and to disadvantage NVIDIA in the marketplace, which may include improperly encrypting its buses, or degrading the performance of the buses. Further, on information and belief, Intel is using these tactics to steer customers away from NVIDIA licensed MCPs and towards Intel's graphics technology and thus is causing NVIDIA immediate injury.

47. Intel's conduct represents further breaches of the implied covenant of good faith and fair dealing. Whether it be by public repudiation of the license, or bad faith gaming of the technology, Intel is plainly preventing NVIDIA from enjoying the licensing rights that it bargained for while, at the same time, making full use of its cross license to NVIDIA's patent portfolio.

First Cause of Action

Declaratory Judgment of Application of the CLA to the "Disputed NVIDIA MCPs"

48. NVIDIA repeats and realleges each and every allegation set forth in Paragraphs 1-47 above.

49. The CLA grants NVIDIA a license to use, import, sell, offer to sell and otherwise dispose of NVIDIA Licensed Chipsets.

50. The CLA and Cross License are valid agreements. NVIDIA has substantially performed its obligations under these agreements, is not in breach of these agreements, and is able to perform its remaining obligations thereunder.

51. Intel has stated that NVIDIA's MCP chipsets would not be licensed for use with "any Intel processor that has integrated memory controller functionality," because such chipsets

would not satisfy the definition of “Intel Chipsets” under § 2.8 of the CLA and thus would not be covered by the CLA.

52. There is a real and substantial controversy between Intel and NVIDIA, and expeditious determination of this controversy is necessary and appropriate.

53. This dispute is ripe for judicial determination.

54. NVIDIA is entitled to a finding that the so-called “Disputed NVIDIA MCPs” are fully licensed for use with Intel’s Nehalem architecture and other architectures that Intel claims include “integrated memory controller functionality.”

55. No remedy available to NVIDIA at law would be sufficient to remedy fully the injury caused by Intel’s improper interpretation of the CLA.

Second Cause of Action

Permanent Injunction

56. NVIDIA repeats and realleges each and every allegation set forth in Paragraphs 1-55 above.

57. The CLA and Cross License are valid agreements. NVIDIA has substantially performed its obligations under these agreements, is not in breach of these agreements, and is able to perform its remaining obligations thereunder.

58. As a result of Intel’s failure to abide by its obligations under the CLA, NVIDIA has suffered irreparable harm. Without injunctive relief, Intel’s actions, and thus the irreparable harm to NVIDIA, will continue. This harm to NVIDIA outweighs any harm to Intel that would result from an injunction.

59. No remedy available to NVIDIA at law would be sufficient to remedy fully the injury caused by Intel’s conduct. Therefore, NVIDIA seeks to permanently restrain and enjoin Intel’s conduct, including (1) making any statements to NVIDIA’s customers, including PC

makers, motherboard manufacturers and OEMs, that in any way assert or suggest that NVIDIA does not have a right under the CLA to manufacture chipsets compatible with Intel's Nehalem CPUs, and (2) taking any other action that would impair NVIDIA's rights or its ability to exercise its rights under the CLA.

Third Cause of Action

Breach of Contract and/or Anticipatory Repudiation

60. NVIDIA repeats and re-alleges each and every allegation set forth in Paragraphs 1 to 59 above.

61. The CLA and Cross License are valid agreements. NVIDIA has substantially performed its obligations under these agreements, is not in breach of these agreements, and is able to perform its remaining obligations thereunder.

62. The CLA prohibits Intel and NVIDIA from making false or misleading statements concerning the agreements. By making false and misleading statements regarding the terms of the CLA and the application of the CLA to the "Disputed NVIDIA MCPs," Intel has breached § 7.2 of the CLA, which prohibits Intel from making false and misleading statements.

63. By publicly and unequivocally stating, including via its Complaint, that NVIDIA is not licensed to make chips for Nehalem, Intel has also unequivocally repudiated its license.

64. Intel is thus in material breach of the CLA and such breaches are causing NVIDIA immediate and irreparable injury.

65. NVIDIA is entitled to specific performance of the CLA.

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Fourth Cause of Action

Breach of Implied Covenant of Good Faith and Fair Dealing

66. NVIDIA repeats and re-alleges each and every allegation set forth in Paragraphs 1 to 65 above.

67. The CLA and Cross License are valid agreements. NVIDIA has substantially performed its obligations under these agreements, is not in breach of these agreements, and is able to perform its remaining obligations thereunder.

68. The CLA and the Cross License include implied covenants of good faith and fair dealing. This requires Intel to act reasonably to fulfill the parties' intent and expectations in performing its obligations.

69. Intel is in breach of the implied covenant of good faith and fair dealing that underlies both the CLA and Cross License because of its misrepresentations and public repudiation of NVIDIA's rights, as well as its course of conduct relating to the CLA and Cross License. By taking actions to deprive and hinder NVIDIA's sales of licensed chipsets, NVIDIA has been deprived of the full benefit of its bargain under the parties' two, inter-related agreements.

Prayer for Relief

Wherefore, NVIDIA prays for relief as follows:

70. For declaratory judgment that NVIDIA is licensed under the November 18, 2004 Chipset License Agreement between NVIDIA and Intel (the "CLA") to make chipsets that are compatible with Intel's Nehalem architecture, and that NVIDIA is licensed to make the "Disputed NVIDIA MCPs" as defined in Intel's complaint.

71. For issuance of a permanent injunction requiring Intel to cease its misrepresentations in the market and prohibiting Intel from taking any other action that would impair NVIDIA's licensing rights.

72. For a judgment that Intel has breached and/or anticipatorily breached the CLA in a material way, and for specific enforcement of the agreements including NVIDIA's right under § 5.2(a) of the CLA to terminate Intel's rights under the Cross License.

73. Alternatively, for a judgment that Intel has breached the covenant of good faith and fair dealing and for rescission of the Cross License and CLA.

74. For any damages that NVIDIA may be able to prove at trial.

75. For such other relief as the Court may deem just and proper under the circumstances.

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Dated: March 23, 2009

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